

KANSAS REAL ESTATE COMMISSION'S POSITION ON SALES CONTRACTS THAT DO NOT CONTAIN MANDATORY DISCLOSURES REQUIRED BY LAW

The Kansas Real Estate Commission (KREC) has learned that the auditors have been asked for advice about certain residential purchase contracts, such as HUD and VA contracts, which may not include the disclosures for agency, radon gas and registered criminal offenders required under Kansas law. In these situations, the Commission would recommend the use of an addendum containing the required disclosures to ensure that the parties to the transaction acknowledge that all disclosures required by Kansas law have been provided during the real estate transaction.

Due to a miscommunication, some real estate brokers have been advised by Commission staff that it is permissible to have the parties sign both a real estate sales contract form (such as a HUD/VA contract) that does not include the required disclosures and a regular residential sales contract form that includes the necessary disclosures required under Kansas law. The Commission does not approve of this practice and believes that such a practice may create multiple contracts that may have conflicting provisions or may create ambiguities as to the duties and obligations of the parties to the real estate contract.

Instead, the Commission would advise that real estate licensees use an addendum containing the disclosures and language required under Kansas law with any real estate sales contract that does not contain these required disclosures. At a minimum, this addendum should include the brokerage relationship disclosure language required by **K.S.A. 58-30,110(c)**, the required statutory language for radon gas found in **K.S.A. 58-3078a** and the registered criminal offender language found in **K.S.A. 58-3078**.

In circumstances where the seller is willing to sign the addendum, the addendum should be signed by both the buyer and the seller and should be placed in the transaction files maintained by the real estate brokers on this property. This will ensure that the buyer and seller have acknowledged that all the disclosures required under Kansas law have been provided to them during the real estate transaction.

If the representatives of the seller (such as from HUD or VA) will not sign the addendum, the addendum should be signed by the buyers, be placed in the transaction files maintained by the broker for this property and documentation should be included in the file that the addendum was presented to a representative of the seller for signature and no signature could be obtained by the real estate licensees involved in the transaction.

A sample addendum that will satisfy this directive is attached.

REQUIRED STATUTORY DISCLOSURES ADDENDUM

SELLER: _____

BUYER: _____

PROPERTY: _____

CONTRACT DATE: _____

1. BROKERAGE RELATIONSHIPS DISCLOSURE:

- a. SELLER and BUYER acknowledge that the real estate licensees involved in this transaction may be functioning as agents of the SELLER, agents of the BUYER or transaction brokers. Real estate licensees functioning as an agent of the SELLER have a duty to represent the SELLER'S interests and will not be the agent of the BUYER. INFORMATION GIVEN BY THE BUYER TO AN AGENT FOR THE SELLER WILL BE DISCLOSED TO THE SELLER. Real estate licensees functioning as an agent of the BUYER have a duty to represent the BUYER'S interests and will not be an agent of the SELLER. INFORMATION GIVEN BY THE SELLER TO AN AGENT FOR THE BUYER WILL BE DISCLOSED TO THE BUYER. Real estate licensees functioning in the capacity of a transaction broker are not agents for either party and do not advocate the interests of either party. THE UNDERSIGNED PARTIES TO THE TRANSACTION ACKNOWLEDGE RECEIPT OF THE "REAL ESTATE BROKERAGE RELATIONSHIPS" BROCHURE.
- b. Listing Licensee is functioning as a: (Check Applicable) ☐ Seller's Agent or ☐ Designated Seller's Agent (Supervising Broker acts as Transaction Broker) or ☐ Transaction Broker, or ☐ Seller(s) is/are representing themselves.
- c. Selling Licensee is functioning as a: (Check Applicable) ☐ Seller's Agent or ☐ Buyer's Agent or ☐ Designated Seller's Agent (Supervising Broker acts as Transaction Broker) or ☐ Designated Buyer's Agent (Supervising Broker acts as Transaction Broker) or ☐ Transaction Broker, or ☐ Buyer(s) is/are representing themselves.

2. POTENTIAL PROXIMITY OF REGISTERED OFFENDERS TO PROPERTY:

- a. Kansas law requires persons who are convicted of certain crimes, including certain sexually violent crimes, to register with the sheriff of the county in which they reside. If you, as the buyer, desire information regarding those registrants, you may find information on the homepage of the Kansas Bureau of Investigation (KBI) at <http://www.Kansas.gov/kbi> or by contacting the local sheriff's office.

3. RADON NOTICE:

- a. Every buyer of residential real property is notified that the property may present exposure to dangerous concentrations of indoor radon gas that may place occupants at risk of developing radon-induced lung cancer. Radon, a class-A human carcinogen, is the leading cause of lung cancer in non-smokers and the second leading cause overall. Kansas law requires sellers to disclose any information known to the seller that shows elevated concentrations of radon gas in residential real property. The Kansas department of health and environment recommends all home-buyers have an indoor radon test performed prior to purchasing or taking occupancy of residential real property. All testing for radon should be conducted by a radon measurement technician. Elevated radon concentrations can be easily reduced by a radon mitigation technician. For additional information, go to www.kansasradonprogram.org.

CAREFULLY READ THE TERMS BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS DOCUMENT BECOMES PART OF A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.

SELLER	DATE	BUYER	DATE
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SELLER	DATE	BUYER	DATE
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PRESENTED TO SELLER'S REPRESENTATIVE FOR
SIGNATURE AND NO SIGNATURE WAS PROVIDED
ON THIS DATE: _____

SIGNATURE OF SELLING LICENSEE WHO HAS BEEN
UNABLE TO OBTAIN SELLER'S SIGNATURE